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Steven V. King
Acting Executive Director and Secretary
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Procedural Rulemaking (Docket No. A-130355)

Secretary King:

As a threshold comment, we wish to express our appreciation for the Commission undertaking a separate workshop and commenting process for the solid waste industry to focus on the tariff filing regulations that are unique to the industry. On behalf of our solid waste collection clients, we offer the following comments on the Notice of Opportunity to File Written Comments on Solid Waste Industry Procedural Rules (the "Notice") inviting input on proposed revisions to WAC 480-07-505(3) and WAC 480-07-520 (collectively, "the Tariff Rules").

Although we have provided some initial reactions and observations to the proposed rule changes, our ability to provide meaningful input is limited by our lack of understanding the Commission's objective. What, exactly, are the proposed revisions intended to accomplish? Many of them impose additional burdens on filing companies, rather than clearing up standards under existing procedures and ensuring consistency in audit reviews. Many of the new provisions impose more burdensome requirements similar to what is expected of Title 80 companies, and in that sense fail to align the tariff filing rules with the practical limitations of the solid waste industry. Given that the dollars involved are typically much lower, the trend of imposing more extensive documentation and analysis is not commensurate with the appropriate burden.

To be fair, in some cases the proposed changes provide greater clarity of expectations, and so long as the industry is afforded greater certainty than it has now, that is a welcome outcome. For the most part, however, these proposed revisions seems to reflect staff's "wish list" of what could, feasibly, be submitted, rather than what is, functionally, needed to audit a general rate request from a solid waste collection company.

In response to the proposals offered and in the order presented by the Notice:

1. WAC 480-07-505(3):

a. Garbage disposal (transfer station or landfill) fees only. If an affiliated interest transaction exits, the company must also demonstrate that the disposal fee complies with RCW 81.77.160(3).

Thank you. We agree that a filing to pass through disposal fees should not be defined as a general rate proceeding. We acknowledge that the statute cited establishes the standard for the amount of charges for disposal at a facility owned by an affiliated interest, but as a procedural matter it would be a welcome relief to allow single-item filings to accomplish the adjustment.

b. Recycling material processing fees only. The company must demonstrate the cost of the disposal fees and the effect on rates. If an affiliated interest transaction exits, the company must also provide the information required by WAC 480-07-520(j).

c. Yard waste processing fees only. The company must demonstrate the cost of the disposal fees and the effect on rates. If an affiliated interest transaction exits, the company must also provide the information required by WAC 480-07-520(j).

Thank you. Both recycling and yard waste facility fees are applicable to an increasing proportion of the solid waste collected by the industry. Especially when they are established by third-parties, handling increases as single-item filings is reasonable.

We are troubled by the blanket reference to information required by WAC 480-07-520(4)(j), however, for obvious reasons related to ongoing issues of confidentiality that we are all struggling with. An income statement and balance sheet for an affiliated processing facility can provide a great deal of information that can be used by nonregulated competitors. Currently, financial information about material recycling facilities is particularly sensitive in light of the competitive field of unregulated commercial recycling. Given increasing trends to separate organics from the general waste stream, yard waste facilities present similarly competitive sensitivities.

We recommend the Commission consider at the very least making this a discretionary requirement conditioned on a need to demonstrate the processing fee is fair. In other comments, we express discomfort with granting staff broad discretion and urge that the regulations express certainty wherever possible; but in this case, the discretion is limited to either "yes or no." We believe staff should not be required to ask for an income statement or balance sheet simply because the rule says so, but instead should make an initial judgment about whether it is necessary or not. There may be circumstances where that level of financial detail is unnecessary. If the affiliate's

processing fees were recently audited, if the fees are obviously commensurate with market fees, if for any reason the information is not needed, then the rule should allow the requirement to be bypassed.

Please also see our comments to the proposal regarding WAC 480-07-520(4)(j).

d. Filings that only decrease residential recycling commodity credits. Note that a decrease in the credit results in an increased charge to the customer.

Thank you. We understand that filing to increase recycling commodity credits which result in a decreased charge to the customer are entirely outside of the scope of WAC 480-07-505 because they do not result in an "increase in rates."

This is also consistent with the Commission and customer notice provisions in Chapter 480-70 WAC as well. (WAC 480-70-262, a "decrease in rates" requires seven-day notice to the Commission; and WAC 480-70-271, notice after final commission action on commodity credits and charges "when a company increases rates").

2. WAC 480-07-520:

a. Require results of operations for ratemaking purposes to conform to a uniform format including portrayal by account of (a) test year "per books" results of operations, (b) restating and pro forma adjustments, and (c) adjusted results of operations before and after rate relief.

Our clients believe they are already doing this, and so we are puzzled by this item and may have further comments once we understand more definitely what the Commission means by "a uniform format" or otherwise intends by this proposal.

b. Require a general description of the rate case filing, including discussion of the significant factors causing the need for rate change, the date of the last rate change, and customer class impacts.

We have no objection but again, we believe this is already provided. Customer notice letters required by WAC 380-70-271 require a clear explanation of the reasons a company has requested a rate change, a comparison of the current and proposed rates for the four most used services, as well as other information. The transmittal letter required by WAC 480-70-326(s) also includes discussions of these elements in that it requires a description of each proposed change and the reason, the dollar and percentage amounts that change. Since those letters are included in tariff filings, this information is now provided – except possibly the date of the last rate change is not commonly stated in customer notifications, and there is no objection to including that piece of information to save the auditing staff the trouble of looking in the Commission's on-line records to find out.

If there is some specific need the Commission is addressing with this proposal other than what we have provided, then we are interested in learning what it might be that is not currently available.

c. Require a narrative explanation and supporting calculations of all restating and pro forma adjustments.

Our clients believe they already provide this information. A narrative explanation of restating and pro forma adjustments is usually in notes to the spreadsheet entries where the adjustments are made. If the proposal is intended to suggest a standardized format or description, we may have further comments. Again, understanding the Commission's intent and what it is trying to correct would inform our response.

We understand it is the company's burden of proof to demonstrate the rates are just, fair, reasonable and sufficient, and yet we are rarely told what exactly is needed to meet that burden. This proposal seems more oriented to form rather than substance, but if the Commission were to embellish it to articulate minimum standards, the insight and guidance would be welcomed.

d. Establish a time for Commission staff review before a filing is accepted and the corresponding impact on tariff effective dates. If the filing does not initially satisfy the filing requirements, the commission will not consider the document to be officially filed and the statutory filing time period will not start until the date and time that the commission receives all required electronic and paper copies that comply with the rule requirements.

Industry representatives have repeatedly requested that there be some limitation to the time within which staff may "reject" a filing for failing to satisfy filing requirements. We understand that the 45-day time frame does not afford much extra time, but it is unacceptable to be two or three weeks into the filing period before being informed that a filing is insufficient and is being rejected. Staff should have two days to determine completeness. Staff may continue to request further information during the audit process, but thereafter it may not reject the filing for being incomplete.

Also, we suggest the rule allow for companies to "prefile" a rate case and, if they do so sufficiently early to allow for staff to determine whether the filing is complete before the 45-day deadline. So, for instance, if a filing has a 45-day deadline of May 15 for an effective date of July 1, then a company may "prefile" on May 5, with a five-day review so that it can be informed by May 10 whether the filing is complete for purposes of the May 15 deadline. If informed after the threshold review that the filing does not satisfy the requirements, then that would give the company five days to correct the deficiencies. Election to prefile would be optional. If a company does not prefile, and a filing made on the 45-day deadline is deemed incomplete because it does

not satisfy filing requirements and is materially deficient, then the company would be at risk of missing the statutory time period.

e. Specify that filings that do not comply with all filing requirements will be rejected.

It is objectionable to have filings rejected for picayune reasons. The authority of Commission staff to reject a tariff rate request must be limited to material deficiencies or omissions. Staff's discretion to determine whether filing requirements have been met must have some bounds. Especially in light of the other items suggesting more "narrative descriptions," staff's arbitrary determination of what is enough needs to be protected against. If minor discrepancies are discovered that can be easily rectified without interfering with the auditor's ability to commence review, then corrections for immaterial omissions should be permitted without the requirement for starting the 45-day clock all over again.

f. Require a summary document (checklist) that shows, for each section and subsection of WAC 480-07-520, the location of the required information in the company's filing or work papers.

Again, our clients believe this is being done. Some companies actually employ the checklist, but others simply prepare a table of contents and index. Presumably it is not the form that this proposal is addressing, but rather the need for a roadmap. If the Commission is intending to require use of a specific form, or demand that filings literally utilize the "checklist," so long as there is a clear understanding of what is expected then we have no objection.

g. Require under WAC 480-07-520(4)(j) that the company demonstrate the cost of every affiliate transaction.

It is unclear from this statement whether there is a revision being proposed or not, and if so, what it is intended to achieve. Given the industry's lack of confidentiality protection for materials submitted to the Commission, the breadth of this requirement seems to entirely disregard the need for heightened sensitivity regarding financial information about affiliated companies.

Regulated solid waste collection companies should be required to submit information about affiliated transactions only in the most surgical manner, strictly limited to an auditing need. As mentioned previously, if a processing fee has been recently reviewed, it may not be necessary to review it again and this information would not have to be submitted with every general rate case.

Indeed, the current rule should be modified to narrow the scope of its applicability, not to broaden it. It currently requires an income statement and balance sheet "for <u>every</u>

affiliated entity" (emphasis added). Instead, companies should be required to submit financial information only for those affiliated transactions 1) with the regulated entity 2) that directly affect rates. Even then, submitting these kinds of documents into the public record should be limited to only when necessary for the audit.

Further, as discussed at the workshop but not addressed in the Notice, the industry requires certainty about how to recover affiliated entity fees. For landfill disposal fee, the test is whether there is a reasonable and currently available option at lower cost. Remarkably, that standard has not been codified for processing facilities. It could be employed for affiliated processing fees as well. At the very least, precedent would support allowing a fair return on the investment made for the affiliated entity, although reasonable minds may differ on what is "fair" or not.

h. Require under WAC 480-07-510(3)(e) that the company explain and provide work papers supporting the derivation of all inter- and intra-company and multiservice cost allocation factors.

We are unclear what the Commission means by "inter- and intra-company and multiservice cost allocation factors," and we are not certain what is intended by this comment.

However, handling of allocation factors is of great interest. While we do not believe that allocation methodologies should be constrained by rule, we instead would support a regulation that requires auditors to use the same standards for accounting adjustments from one case to the next. A company should be able to depend on having the same allocation methodologies applied in auditing. Lacking the ability to depend on having the same factors consistently utilized hamstrings a company's ability to assess its revenue needs and prepare work papers properly. We acknowledge the need for some flexibility, but only if an auditor demonstrates good cause for varying from a previously-utilized allocation approach should a change be permitted.

i. Provide that the Commission and staff may request additional information needed to determine costs and rates during the review process.

We do not understand the objective of this proposal or why this is necessary. Both the Commission and staff may already request additional information. Auditors are currently doing so through informal data requests.

We would again suggest that this right be somewhat constrained by sensitivity to financial information about unregulated companies, as discussed above. The other point to consider is timing. Staff's ability to request further information should have a cut-off date that allows for time to prepare for the Open Meeting.

j. Require that all electronic documents filed under this rule must comply with WAC 480-07-140(6), be fully functional, include all formulas, include all linked spreadsheet files, and not include locked, password protected, or hidden cells.

For a national, publicly-traded company this issue has been a matter of some consternation. When data is downloaded from the general ledger that is maintained at the corporate level, the local company itself is only permitted access to locked cells from the source document. There is simply no way to avoid this. It should not be considered grounds for rejecting a tariff filing that otherwise comports with regulatory requirements.

k. Require under WAC 480-07-250(a) that the filing include for each adjustment, the source of the adjustment (e.g. general ledger) and all supporting calculations and documentation, as well as a narrative explanation of the underlying reasons for each adjustment.

This seems to be duplicative of other items in the Notice. We are therefore interested in learning what distinctions the Commission has between and among the various references to narrative explanations. We have heard several times that energy companies include prefiled testimony with their rate filings. For the amounts that are contested in those filings, they can afford to gold-plate the documents. They also can anticipate litigation. For solid waste companies, even the larger ones, the dollar amounts are lower and therefore the documentary burden should be lesser.

l. Require an analysis of the cost to provide each of the collection services offered by the company.

A cost of service study should not be required for each collection service in every filing. The rules were revised to eliminate the requirement and we do not understand the need for reinstating it now. If there is a long period of time, more than five years since the company's last general rate case, or if there have been significant change in the territory serviced, or if new services have been added – there may be reasons for requiring a cost of service study, but it should not be a regulatory requirement for each case.

m. Require a general ledger, in Excel format, reconcilable to the per books pro forma income statement.

Our clients believe they are meeting this requirement. It is obviously difficult for smaller companies to comply with this expectation, however, and although we do not object, others may legitimately find it burdensome.

In conclusion, for many of the proposals we are uncertain of what the Commission is trying to fix. We have provided some initial responses, but we are glad to see in the Notice that another workshop is anticipated. Dialogue with the Commissioners and

staff during this process has been exceedingly valuable, and we believe all parties are intending to make the tariff filing requirements for solid waste collection companies transparent, uniform, and predictable. We look forward to continued efforts to achieve that outcome, and thank you for embarking on this rulemaking to do so.

Sincerely,

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